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No. _____

IN THE SUPREME COURT OF THE

UNITED STATES

October Term 1982

THOMAS MARSHALL IRWIN,

Petitioner,

VS.

STATE OF ALABAMA,

Respondent.

Petition for a Writ of Certiorari

to the Supreme Court and the Court of

Criminal Appeals of Alabama

J. Doyle Fuller
Attorney for
Petitioner

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QUESTION PRESENTED

Whether the Petitioner's right to equal protection under the Fourteenth Amendment of the United States Constitution has been denied by the divergent application of Alabama's "knock and announce" rule in the execution of a search warrant.

PARTIES

In the Circuit Court of St. Clair County, Alabama, the Court of Criminal Appeals of Alabama and the Supreme Court of Alabama, the parties were: Thomas Marshall Irwin, Petitioner herein, and the State of Alabama, Respondent herein.

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This case involves the Fourteenth Amendment to the Constitution of the United States and Section 15-5-9, Code of Alabama (1975).

OPINION BELOW

The conviction of the Petitioner was affirmed by opinion of the Alabama Court of Criminal Appeals dated March 2, 1982. Application for rehearing in that court was timely filed wihch said application was overruled without opinion on April 20, 1982. The Alabama Supreme Court denied a timely Petition for Writ of Certiorari on July 2, 1982, without opinion.

A copy of the opinion and order reflecting these actions are attached hereto as Appendix "A".

JURISDICTION

The judgment of the Supreme Court in denying the Writ of Certiorari to the Court of Criminal Appeals of Alabama was entered on July 2, 1982. The effect of this opinion was to exhaust Petitioner's avenues of relief in the highest court of the State of Alabama, and to affirm the opinion of the Court of Criminal Appeals of Alabama.

CONSTITUTIONAL PROVISIONS INVOLVED

The Fourteenth Amendment to the United States Constitution reads as follows:

> ". . . All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and the State herein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of

citizens of the United States, nor shall any State deprive any person of life, liberty or property, without due process of law; now deny any person within its jurisdiction of equal protection of the law. . . ."

Section 15-5-9, Code of Alabama (1975) reads as follows:

§15-5-9. Authority of serving officer to break into house.

The execute a search warrant, an officer may break open any door or window of a house, any part of a house or anything therein if after notice of his authority and purpose he is refused admittance."

STATEMENT OF THE CASE

The Petitioner, Thomas Marshall Irwin, was indicted by the July 1980 term of the St. Clair County, Alabama, Grand Jury for the crime of violation of the Alabama Uniform Controlled Substance Act (possession of Cocaine).

The case was tried to the Circuit Court of St. Clair County, Alabama, by stipulation of facts without benefit of a jury. Upon said stipulation of facts, the trial court found the Defendant guilty of possession of Cocaine and sentenced him to a term of seven and one-half years in the penitentiary.

Thereafter, appeal was perfected by trial counsel for the Petitioner to the Court of Criminal Appeals of Alabama entered its opinion affirming the conviction of the Defendant. Application for rehearing to the Court of criminal Appeals was overruled. On July 2, 1982, the Alabama Supreme Court denied Your Petitioner's Petition for Writ of Certiorari in that court.

This Petition is submitted to review the rulings of the Appellate Courts for the State of Alabama wherein they held that police officers in executing a search warrant

for drugs or other narcotics were not required to comply with the provisions of Section 15-5-9, Code of Alabama (1975), which is commonly known as the Alabama "knock and announce" rule.

STATEMENT OF THE FACTS

In the early morning house of January 28, 1980, officers of the Birmingham City Police Department, the St. Clair County Sheriff's Office and members of the news media went to Defendant's residence located in rural St. Clair County, Alabama, armed with a search warrant, the propriety of which is not at issue before this Court. The police officers approached the door of Petitioner's residence and within less than twenty seconds, entered the premises through an unlocked door. In conducting the search,

a quantity of a substance later identified as Cocaine was found in the residence and Your Petitioner, along with two other individuals, was charged with possession of the same. The case proceeded through the trial and appellate court levels of the State of Alabama on the theory that the officers failed to comply with the provisions of §15-5-9, Code of Alabama (1975), in that they were never refused admittance, nor does the record reflect that any activity was detected inside the residence to indicate that destruction of evidence or other contraband was in progress. To the contrary, the police officers testified that all individuals inside the house were asleep and had to be aroused after they entered the premises. In numerous cases, which will be discussed infra, the courts of the State of Alabama have held that police officers in executing search

warrants must strictly abide by the provisions of §15-5-9, Code of Alabama (1975), in that they may not enter the premises without an affirmative refusal of admittance or the lapse of sufficient time to amount to an implied refusal of admittance. The courts have recognized an exception akin to "extigent circumstances" wherein officers who detect furtive or other movement inside the premises which indicate the destruction or likelihood of destruction of the substance or evidence sought are authorized to make immediate entry into the premises without further compliance with §15-5-9, Code of Alabama (1975). The effect of the ruling of the court in the case sub judice is to grant an additional exception to the "knock and announce" rule when the officers are seeking under the search warrant to seize narcotics. The court justified this ruling

on the sole premises that law enforcement officers are reasonable in assuming that narcotics or other substances will be destroyed because of the easily destroyable nature of the same. It is Petitioner's contention that there is no reasonable basis for distinquishing between narcotics and other evidence sought under a search warrant solely on the basis of the nature of the substance sought.

ARGUMENT

REASONS FOR GRANTING THE WRIT

On behalf of the Petitioner it is submitted to the Honorable Court that the Writ of Certiorari should be granted to consider the question of denial of equal protection to Your Petitioner under the decisions of the Court of Criminal Appeals of Alabama.

The facts of this case, as embodied in the opinion of the Court of Criminal Appeals of Alabama, reflect that the only reasonable inference to be drawn from the action of the Court of Criminal Appeals of Alabama in its opinion is that a distinction has been made in the standards for the execution of a search warrant in the State of Alabama when the officers are seeking drugs or narcotics. It has been the long standing law in the State of Alabama that police officers in executing a search warrant must strictly comply with §15-5-9, Code of Alabama (1975). LaFitte v. State, 370 So. 2d 1108 (Ala. Crim., 1979); Reynolds v. State, 46 Ala. App. 27, 238 So. 2d 557 (Crim. App., 1970); Daniels v. State, 391 So. 2d 1021 (Ala., 1980).

The case sub judice, the court has not made a distinction which authorizes police officers to vary from the statutory require-

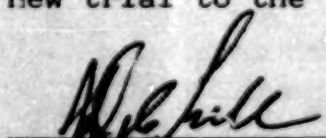
ments of §15-5-9, Code of Alabama (1975), when seeking narcotics. The effect of this is to deny Your Petitioner equal protection of the laws in that there is no viable or reasonable distinction between searching for evidence of one crime such as stolen goods and search for evidence of a crime such as possession of Cocaine.

The Petitioner request that this Honorable Court review the facts of this case to determine if his right to equal protection under the laws has been denied. This court should grant the Writ to make this determination now especially in view of the far reaching repercussions allowing such a distinction in the execution of search warrants in narcotics cases. Your Petitioner has exhausted all of his remedial rights in the courts of the State of Alabama and this court is the proper tribunal for redress

of his rights.

CONCLUSION

In conclusion the Petitioner, Thomas Marshall Irwin, respectfully submits that the decisions of the Court of Criminal Appeals of ALabama and the Supreme Court of Alabama in this case present conflict with prior decisions of this Honorable Court. For this reason, the Petitioner prays that this Honorable Court will issue the Writ of Certiorari and review the decision of the Honorable Court of Criminal Appeals of Alabama and the Supreme Court of Alabama and on such review will reverse the decisions of said courts granting a new trial to the Petitioner.

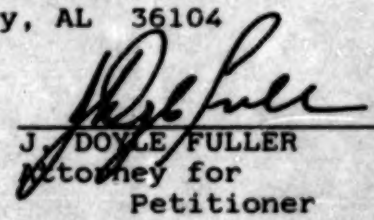


J. DOYLE FULLER
Attorney for
Petitioner

CERTIFICATE OF SERVICE

I, J. Doyle Fuller, a member of the Bar of the Supreme Court of the United States and attorney for the Petitioner, Thomas Marshall Irwin, do hereby certify that on this ____ day of _____, 1982, I did serve the requiste number of copies of the foregoing on the attorney for the Respondent by mailing same to him first-class, postage prepaid and addressed as follows:

State of Alabama
Hon. Charles A. Graddick
Attorney General's Office
250 Administrative Building
64 No. Union Street
Montgomery, AL 36104



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